



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Pippig *et al.*

App. No. 09/715,249

Filed: November 17, 2000

For: Selectable Cell Surface Marker Genes

: Confirmation No. 7928

: Art Unit: 1636

: Examiner: Maria Marvich

: Atty Docket: 4-31192A

Considered

DECLARATION OF PRIOR INVENTION UNDER 37 C.F.R. § 1.131

mm

8/28/03 Mail Stop AF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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AUG 08 2003

Sir:

TECH CENTER 1600/2900

The inventors, Susanne Pippig and Gabor Veres, declare as follows:

1. We are former employees of Systemix, Inc., in Palo Alto, California. While employed at Systemix, we invented the invention described and claimed in U.S. Provisional Application Nos. 60/166,594 and 60/304,204, both filed November 19, 1999, and are therefore the named inventors thereof. We are also the named inventors of the above-captioned Application No. 09/715,249, which claims the benefit of Provisional Application Nos. 60/166,594 and 60/304,204.
2. It is our understanding that in a Final Office Action dated May 20, 2003, in Application No. 09/715,249, claims 27 and 29 were rejected under 35 U.S.C. § 102(a) as being anticipated by Chida *et al.*, *Blood* 93:1567-1578 (March 1, 1999). We make this Declaration in a traversal of this rejection.

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3. Prior to the March 1, 1999, publication date of the Chida *et al.* paper, we conceived and reduced to practice the invention claimed in pending claims 27 and 29. As evidence of our prior invention, we attach hereto Exhibit A.

4. Exhibit A is an Invention Disclosure, which included copies of relevant laboratory notebook pages showing the invention, that was submitted by inventor Susanne Pippig to the Systemix Patent Department prior to the March 1, 1999, publication date of the Chida *et al.* paper. Although the dates in Exhibit A have been redacted, they are (with one exception) all prior to March 1, 1999. The exception is a single date in the Invention Disclosure that is one year later than it should be, due to an obvious typographical error. Exhibit A shows that prior to the publication date of the Chida *et al.* paper, we conceived and reduced to practice the invention claimed in pending claims 27 and 29. For example, see Invention Disclosure sections 2, 3, and 5. See also notebook no. 1389, page 69, and notebook no. 1498, page 21 (showing construct pGla-hEGFR-IRES-NGFR).

5. All statements made herein of our own knowledge are true and all statements made on information and belief are believed to be true. Further, these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Subscribed to on the following date:

Susanne Pippig, Ph.D.

June 30, 2003


Gabor Veres, Ph.D.



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Subscribed to on the following date:

7/23/2003 Susanne Pippig
Susanne Pippig, Ph.D.

Gabor Veres, Ph.D.